

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 856 of 1998

And

LETTERS PATENT APPEAL NO.861 OF 1998

in

SPECIAL CIVIL APPLICATION No 4966 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

JETHALAL AMBARAMDAS PATEL

Versus

MEHSANA DISTRICT CENTRAL COOP BANK LTD

Appearance:

Mr.R.S.Sanjanwala for the appellant in L.P.A.No.856/98
and Mr.K.S.Zaveri for the appellants in L.P.A.No.861/98

Mr.K.G.Vakharia, senior counsel with Mr.Tushar Mehta for
respondents Nos.1 and 2 in both the matters as caveator.

Mr.J.M. Thakore, learned Advocate General with

Mr.D.N.Patel,learned A.G.P. for respondents Nos.3 to 11 in both the matters.

Mr.K.S.Zaveri for the respondent Nos.12 to 14 in L.P.A.No.856/98.

Mr.R.S.Sanjanwala for the respondent No.12 in L.P.A.No.861/98.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

Date of decision: 10/07/98

COMMON ORAL JUDGEMENT (Per: M.R.Callla,J)

1. Both these Letters Patent Appeals are directed against the interim order dated 6.7.98 passed by the learned single Judge in Special Civil application No.4966 of 1998 read with the order dated 9.7.98 passed in Civil Application No.6373 of 1998 and Civil application No.6330 of 1998 in Special Civil Application No.4966 of 1998.

2. The dispute relates to the election of the Board of Directors of the Mehsana District Central Co-operative Bank Ltd., Mehsana. The Mehsana District Central Co-operative Bank Ltd., Mehsana had in the first instance filed Special Civil Application No.2302 of 1998 in March 1998 and in this Special Civil Application final order was passed on 13.5.98 based on the statement made by the learned A.G.P. before the Court that the elections for the Board of Directors of the Bank shall be notified on 29.5.98. Accordingly the elections were notified by the Deputy Collector, Mehsana i.e. the Returning Officer for the purpose of this election on 29.5.98. As per the election programme notified by the Returning Officer, the dates for the different stages in the process of election were as under:

8.6.98 Last date for filing nomination.

10.6.98 Scrutiny of the nomination forms.

12.6.98 The list of accepted nomination forms to be declared.

18.6.98 Last date for withdrawal.

19.6.98 The final list of contesting candidates to be issued.

28.6.98 Polling (Voting) to be held.

29.6.98 Counting and result.

While the process of election was going on as per the schedule, the Mehsana District Central Co-operative Bank

Ltd., Mehsana had to file another Special Civil Application No.4423 of 1998 as the Notification had been issued as to why the Custodian may not be appointed under the Act. This Special Civil Application No.4423 of 1998 was entertained before the single Judge and while issuing Rule stay was also granted in favour of the Bank.

2. The list of the contesting candidates had been issued on 19.6.98 and, thereafter, before a couple of days of the date of polling, a Notification was issued by the Government on 25.6.98 that elections of the Co-operative Societies all over the State shall be held not before 30.9.98. This Notification dt.25.6.98 was followed by another Notification on 26.6.98 to the effect that the postponement of the elections until 30.9.98 shall also apply to the elections, which had already been notified and which were in the process. The Returning Officer gave the public notice of these Notifications on 27.6.98 and aggrieved from these Notifications the Mehsana District Central Co-operative Bank ltd. filed the third Special Civil Application No.4966 of 1998. This petition came before the Court on 29.6.98 on which date the learned counsel for the Bank as well as the learned Advocate General, who was present before the Court, were heard. The contents of this order dated 29.6.98 show that the learned Advocate General was not having a copy of the Officially Gazetted Notification and he was not in a position to make any further submission on that basis but he submitted that keeping in view the suggestion of the Court he would suggest the respondents that the postponed elections be held preferably before 15.7.98. While issuing notice to the respondents the matter was posted for 3.7.98. It is given out by the learned counsel that on 3.7.98 the time was sought on behalf of the Advocate General and the Court thereafter adjourned the matter to 6.7.98. The contents of the order dt.6.7.98 passed by the learned single Judge show that even on this date i.e on 6.7.98 the learned Advocate General stated that the Government does not want to make any statement in this behalf. The learned single Judge heard the parties and fixed 12.7.98 as the date for voting and 13.7.98 as the date for counting of the votes and the declaration of the result immediately thereafter. This interim order was passed while issuing Rule on that very date in the Special Civil Application.

3. Thereafter, one contesting candidate, namely, Jethalal Ambaramdas Patel filed Civil Application No.6330 of 1998 in Special Civil Application No.4966 of 1998 and three other candidates, who were contesting, also filed another Civil Application No.6373 of 1998 for being

impleaded as parties in the Special Civil Application and for review/re-consideration/modification of the order dated 6.7.98 whereby the learned single Judge had fixed the dates of Polling and counting etc. The learned single allowed the two Civil Applications whereby all the four applicants were permitted to be arrayed as respondents and, thereafter, their prayer with regard to the change of the date of the polling from 12.7.98 to 19.7.98 was also considered, but the same did not find favour with the learned single Judge and the learned single Judge after hearing the four applicants also maintained the dates of polling and counting, which he had fixed by his order dated 6.7.98.

4. These four applicants, who were arrayed as respondents by order dated 9.7.98, are those, who had filed their nominations for the purpose of election in question, their nominations had been accepted and their names also figure in the final list of contesting candidates as was declared on 19.6.98. They are aggrieved against the aforesaid interim order dated 6.7.98 read with the order dated 9.7.98 in so far it seeks to maintain the same date for the purpose of voting and counting etc. as was fixed by the learned single Judge on 6.7.98 and they want that the elections should be held on 19.7.98 instead of 12.7.98. For this purpose an argument has been raised that they came to know about these dates of voting fixed by the Court only after 6.7.98 and that under Rule 16 ten days time is required to be given.

5. The learned Advocate General has supported the contentions of the appellants based on Rule 16.

6. We have heard learned counsel for all the sides. It appears that the election process, which had commenced on the basis of an order made before this court was interfered with by issuing the notifications on 25th and 26th, June 1998, whereas the Bank has been approaching this Court again and again since March 1998 for holding the elections of its Board of Directors. When this Special Civil Application No.4966 of 1998 i.e. the third Special Civil Application was filed wherein the Government and the concerned Collector etc. had ample opportunity to make a statement before the Court as to on what date they will be holding the postponed elections, despite repeated opportunities upto 6.7.98 the Government and its functionaries including the Returning Officer did not make their stand clear before the Court. In such circumstances, the learned single Judge was left with no alternative but to fix the date for holding the elections

and, therefore, on 6.7.98 the elections, which were earlier notified to be held on 29.6.98 i.e. on Sunday, were ordered to be held on 12.7.98 which too is a Sunday. The argument based on Rule 16 prima facie does not impress us that ten days time must be given before the date of voting at this stage in the facts of this case. Under Rule 16 ten days time is required to be given from the date when the final list of contesting candidates is declared. Such date is 19.6.98 while the Polling was to take place on 29.6.98 and, therefore, all the candidates had already got the advantage of this ten days time. Now when the Returning Officer and the functionaries of the Government became indifferent for the purpose of making their stand clear before this Court with regard to fixing the date of the postponed election and the Court has fixed the date, the Court while fixing such date was not supposed to give ten days because Rule 16 already stood complied with earlier when the polling date was fixed for 29.6.98. The argument raised on behalf of the present appellants that they have come to know about the date of voting as fixed by the Court only after 6.7.98; the appellants in Letters Patent Appeal No.861 of 1998 had come to know of it on 7.7.98 and the appellant in Letters Patent Appeal No.856 of 1998 says that he came to know of it only on 9.7.98. Prima facie we find that those appellants were in the fray as contesting candidates in the election. It does not inspire confidence and appears to be unbelievable that while they were contesting candidates they were not knowing about the matters going on before the Court or otherwise with regard to the date of election. Technically they may be right that they did not know about the date as was fixed by the Court but it does not appeal to the reason and it is not at all believable that they did not know about the date of election as was fixed by the Court. Even if it is assumed that they came to know of it only on 7.7.98 or 9.7.98 this condition would apply to all the candidates, who are in the fray because all those candidates are also not parties and even if one is found to be a party, no one would have known about this date of election i.e. 12.7.98 before 6.7.98 because 6.7.98 is the date on which the Court had fixed 12.7.98 for the purpose of polling and it may also be mentioned that indication had already been given earlier on 29.6.98 by the Court and the Advocate General had also made a statement keeping in view the suggestion of the Court that he would suggest the concerned functionaries to hold the postponed election preferably before 15.7.98. In such circumstances, if the Court has fixed the date for postponed election to be held on 12.7.98 we do not find that this order deserves any interference in the Letters

Patent Appeals. The dates of election cannot be changed, altered or varied to suit the convenience of the contesting candidates. If the date of 12.7.98 is now changed to 19.7.98, as sought by the present appellants, some other candidate may again come and say that it may be held on some date other than 19.7.98 and it will become an endless process for the Court to go on fixing the date again and again to suit the convenience of the individual candidates in the field. It was a case in which the Court's order was sought to hold the postponed election. Despite the suggestion made by the Court and despite repeated opportunities, the Returning Officer or the Government did not make its stand clear as to when they will be holding the postponed election. In such circumstances, there is no justification whatsoever to alter the date of polling and the counting and the declaration of result, as has been fixed by the learned single Judge on 12.7.98 in terms of the order dated 6.7.98.

7. Yet another argument that the order dated 6.7.98 was passed without hearing the present appellants do not hold any substance for the simple reason that on 9.7.98 after arraying these appellants as respondents in the Special Civil Application, the learned single Judge heard them on merits on 9.7.98 and after hearing them on merits he has maintained the earlier order dated 6.7.98.

8. For the reasons aforesaid, we do not find any basis to interfere with the impugned order dated 6.7.98 read with the order dated 9.7.98. Accordingly, we do not find any force in either of these two Letters Patent Appeals. Both these Letters Patent Appeals are accordingly dismissed.